IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5516 OF 2005

Anand Krishna Bhide & Anr. : Petitioners

(Orig. Applicants)

V/s.

Swami Swarupanand Seva Mandal & Ors. : Respondents

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Mr.S.S.Patwardhan for the petitioners.

Mr.A.A.Kumbhakoni with Mr.A.P.Kulkarni for the respondent no.1.

Ms V. Mhaispurkar, Asstt. Govt. Pleader, for the respondent no.5.

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CORAM : S.A. BOBDE, J.

September 15, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Kumbhakoni for the respondent no.1 and Ms Mhaispurkar, the learned Asstt. Govt. Pleader for the respondent no.5, appear and waive service of rule.

Heard by consent.

2. The petitioners have challenged the order of the Joint

Charity Commissioner, Kolhapur Region, Kolhapur, rejecting their application under section 41A of the Bombay Public Trusts Act, 1950, hereinafter referred to as the "Act". By the said application, they had prayed that the respondent-trust should be directed not to hold its General Body meeting at Pune but to hold it at any place other than Ratnagiri or Pavas. The trust is known as "Swami Swarupanand Seva Mandal" which has its registered office at Ratnagiri and Pavas. The petitioners are members of the trust and the respondent nos.2 to 4 are office bearers. These respondents called a General Body meeting of the trust at Anand Mangal Karyalaya, Shukarwar Peth, Pune, on 3.7.2005. On an earlier occasion in respect of the same meeting which was proposed to be held on 23.9.2001 outside Ratnagiri and Pavas, some other members had preferred an application which was dismissed as infructuous.

3. On this occasion again when a General Body meeting had been called on 3.7.2005, it is the petitioners, who have challenged the venue of the meeting. According to the petitioners, the venue of the General Body meeting of the trust cannot be held at any place other than Ratnagiri or Pavas according to the constitution of the trust. The petitioners have fairly conceded that the meeting of the

Managing Committee can be held only at Ratnagiri or Pavas. The dispute is whether the meeting of the General Body can be held outside Ratnagiri or Pavas.

4. Now admittedly clause 6.1, which deals with general meeting, as translated reads as follows:-

> "6.1 The annual general meeting shall be held after the conclusion of every financial year at a time & place as the Managing Committee may decide, every year."

Clause 6.4, which deals with notice of the meeting, as translated reads as follows:-

> "6.4 The notice in writing of the meeting may be given personally by post or through a newspaper. The notice will be of at least fifteen days & will contain the date, time, place & agenda of the meeting. The said notice should be published at least seven days in advance in any of the newspapers published in the Ratnagiri city. Once such notice is published any proceeding or resolution in the meeting

shall not become illegal for want of service of notice in person or by post."

5. Prima facie, on a plain reading of clause 6.1, it is clear that the General Body meeting may be held at such place and at such time as may be decided upon by the Managing Committee. It is, however, contended by Mr.Patwardhan, the learned counsel for the petitioners, that having regard to the fact that the notice of the meeting is required to be published in a newspaper which has circulation in the town of Ratnagiri, it must be held that the clause must be construed as making it mandatory for the Managing Committee to hold the General Meeting at Ratnagiri.

6. It is not possible to accept this submission. I am of view that the learned Asstt. Charity Commissioner has rightly declined to grant an injunction, having regard to the provisions of rule 6.1.

7. The next contention of Mr.Patwardhan, the learned counsel for the petitioners, is that the meeting is being held on the day after Anant Chaturdashi i.e. on 18.9.2005 and the roads in the city of Pune would be congested and the venue of the meeting would be inaccessible to most of

the members. This difficulty appears to be genuine, but is removed by a statement made on behalf of the respondent no.1 by Mr.Kumbhakoni that the meeting will be rescheduled and it will be held at the same venue on 23.10.2005. This date is fixed by consent of the parties.

8. In this view of the matter, I see no reason to interfere. It is, however, made clear that the application under section 41A, which is still pending, will be decided on its own merit, in accordance with law.

9. It appears from the past record from 1967 till the year 2000 that the meetings of the General Body which have been held at Ratnagiri or Pavas have been attended by very few members. Therefore, the substance in the contention raised on behalf of the respondent is that the likelihood of attendance at Pune would be much greater.

10. The rule stands discharged.

Sd/-

S.A. BOBDE, J.